

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	MB Docket No. 14-82
	)	
<b>PATRICK SULLIVAN</b>	)	FRN 0003749041, 0006119796,
(Assignor)	)	0006149843, 0017196064
	)	
and	)	Facility ID No. 146162
	)	
<b>LAKE BROADCASTING, INC.</b>	)	File No. BALFT-20120523ABY
(Assignee)	)	
	)	
Application for Consent to Assignment of	)	
License of FM Translator Station W238CE,	)	
Montgomery, Alabama	)	

To: Marlene H. Dortch, Secretary  
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S TRIAL BRIEF**

## TABLE OF CONTENTS

I. SUMMARY.....	1
II. LEGAL STANDARD.....	3
III. LAKE'S DIRECT CASE FAILS TO SATISFY ITS BURDEN OF PROOF.....	6
IV. THE BUREAU'S DIRECT CASE DEMONSTRATES THE DEFICIENCIES IN LAKE'S CASE .....	8
A. Summary of Bureau's Written Direct Testimony .....	9
B. Summary of The Bureau's Documentary Evidence.....	10
C. Summary of The Bureau's Case.....	11
1. Rice's Sex Offender Treatment Was Not Successful .....	11
2. Rice Has Never Accepted Responsibility for His Actions .....	13
3. Rice Has Not Taken Steps To Avoid Reoffending.....	14
V. CONCLUSION.....	15

## I. SUMMARY

1. This case arises from the Commission's Hearing Designation Order (HDO) regarding the application of Patrick Sullivan (Sullivan) for Consent to Assignment of the License of FM Translator Station W238CE, Montgomery, Alabama (Application) to Lake Broadcasting, Inc. (Lake).<sup>1</sup> Michael S. Rice (Rice) – Lake's president, director and sole shareholder – is a convicted felon who previously held radio station authorizations that were revoked on the basis of Rice's felony convictions and misrepresentation to, and lack of candor before, the Commission.<sup>2</sup>

2. Specifically, on July 5, 1994, Rice was convicted in St. Charles, Missouri of four counts of sodomy (of children who were under 14 years old), six counts of deviate sexual assault (of children who were between 14 and 16 years old) in the first degree, and two counts of deviate sexual assault (of children who were between 14 and 16 years old) in the second degree, all of which were felonies. The misconduct for which Rice was convicted involved five children. Rice was sentenced to a total of 84 years in prison.<sup>3</sup> Because his sentences ran concurrently, Rice was incarcerated for just over five years. He was released from prison in December 1999. Pursuant to Missouri law, his name remains on the Missouri Sex Offender Registry.<sup>4</sup>

3. In 1997, following an administrative hearing, the Commission revoked the licenses held by Rice in light of the egregious nature of Rice's adjudicated misconduct (*i.e.*, his

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<sup>1</sup> See EB Official Notice Exhibit No. 2 (*Patrick Sullivan and Lake Broadcasting, Inc.*, Hearing Designation Order, 29 FCC Rcd 5421 (MB 2014)).

<sup>2</sup> See EB Official Notice Exhibit Nos. 14-16 (*Contemporary Media, Inc.*, Initial Decision, 12 FCC Rcd 14254 (ALJ 1997); *Contemporary Media, Inc.*, Decision, 13 FCC Rcd 14437 (1998), *recon. denied*, Order, 14 FCC Rcd 8790 (1999), *aff'd sub nom, Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001)).

<sup>3</sup> See EB Official Notice Exhibit No. 15 (*Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14439 ¶ 5 (1998)).

<sup>4</sup> See EB Official Notice Exhibit No. 3 (Enforcement Bureau's Requests for Admissions of Facts and Genuineness of Documents to Lake Broadcasting, Inc., served Aug. 5, 2014) at Request for Admission Nos. 14 and 15; EB Official Notice Exhibit No. 4 (Lake Broadcasting, Inc.'s Responses to Enforcement Bureau's Requests for Admissions of Facts and Genuineness of Documents, served on Aug. 15, 2014) at Response Nos. 14 and 15.

felony convictions for sex abuse of children) and misrepresentations made to the Commission regarding Rice's post-arrest involvement in the management and operation of these radio stations.<sup>5</sup> The United States Court of Appeals for the D.C. Circuit affirmed the license revocations.<sup>6</sup>

4. The HDO in this case commenced a hearing to "evaluate whether Rice has been rehabilitated to an extent that the Commission is fully confident Rice will refrain from engaging in the kind of behavior for which he was convicted" and whether, Rice (and therefore, Lake) "can be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission" and "comply in all other respects with the Commission's Rules, regulations, and policies."<sup>7</sup> The HDO urged the Presiding Judge, in evaluating the evidentiary record in this proceeding, to "consider whether crimes involving child sex abuse are so egregious, so utterly shocking to the conscience, and so patently inconsistent with the public interest, that a person so convicted, regardless of when the conviction took place, may be determined to be qualified to be a Commission licensee only in the most extraordinary and compelling circumstance."<sup>8</sup>

Accordingly, the HDO designated for hearing the following issues:

- (a) To determine the effects, if any, of Michael S. Rice's felony convictions on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee;
- (b) To determine the effects, if any, of the misrepresentation and lack of candor by Michael S. Rice's broadcast companies on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee;

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<sup>5</sup> See EB Official Notice Exhibit Nos. 15 and 16 (*Contemporary Media, Inc.*, Decision, 13 FCC Rcd 14437 (1998), *recon. denied*, Order, 14 FCC Rcd 8790 (1999), *aff'd sub nom, Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001)).

<sup>6</sup> See EB Official Notice Exhibit No. 16 (*Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001)).

<sup>7</sup> EB Official Notice Exhibit No. 2 (HDO, 29 FCC Rcd at 5429, ¶ 21).

<sup>8</sup> *Id.* at 5429 n.60 (citations omitted).

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Michael S. Rice and/or Lake Broadcasting, Inc., is qualified to be a Commission licensee; and

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned Application for consent to the assignment of license for Station W238CE should be granted.<sup>9</sup>

5. The record in this case demonstrates that Lake has failed to meet the burden of establishing by a preponderance of the evidence that (i) Rice has been rehabilitated to an extent that promotes confidence that he will refrain from engaging in the behavior for which he was convicted or there exist the “extraordinary and compelling circumstances” to overcome the public interest concerns associated with Rice’s child sex abuse crimes; and/or (ii) Rice (and therefore, Lake) can be relied upon to be truthful, candid, and forthcoming in his dealings with the Commission, and to comply in all other respects with the Commission’s rules, regulations, and policies. As a result, Lake has failed to establish that Rice (and therefore, Lake) is qualified to hold a Commission license. Thus, the record supports the conclusion that the Application should be denied.

## II. LEGAL STANDARD

6. Pursuant to Section 310(d) of the Communications Act of 1934, as Amended (Act), any assignment of a radio license requires the Commission’s consent,<sup>10</sup> which will be granted where the Commission finds that the “public interest, convenience, and necessity would be served.”<sup>11</sup> An important part of the public interest inquiry is the potential licensee’s character.<sup>12</sup> Pursuant to Section 309(e) of the Act, and as set forth in the HDO, “the burden of

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<sup>9</sup> *Id.* at 5429, ¶ 22.

<sup>10</sup> *See* 47 U.S.C. § 310(d).

<sup>11</sup> 47 U.S.C. § 309(a).

<sup>12</sup> *See* 47 U.S.C. § 308(b) (“[a]ll applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, ... and other qualifications of the applicant to operate the station”); *see also* EB Official Notice Exhibits Nos. 7 and 8 (*Policy Regarding*

proceeding with the introduction of evidence and the burden of proof shall be upon the applicant.”<sup>13</sup> Thus, Lake, as the applicant, bears the burden of proving by a preponderance of evidence that it has the qualifications to be a Commission licensee. Since Lake is solely-owned and operated by Rice, in order to have the Application granted, Lake must prove by a preponderance of evidence that Rice has the qualifications to be a Commission licensee.

7. Under the Commission’s Character Qualifications Policy Statement, non-FCC misconduct may raise a substantial and material question of fact concerning a licensee’s character.<sup>14</sup> In assessing character qualifications in broadcast licensing matters, the Commission considers relevant “evidence of any conviction for misconduct constituting a felony.”<sup>15</sup> In particular, the Commission has found that “[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant’s or licensee’s propensity to obey the law” and to conform to provisions of both the Act and the agency’s rules and policies.<sup>16</sup> In addition, conviction of certain felonies involving “misconduct so egregious as to shock the conscience and evoke almost universal disapprobation...might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee.”<sup>17</sup>

8. Here, the Commission has already concluded that Rice’s felony convictions and misrepresentations to the Commission rendered him unqualified to be a Commission licensee

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*Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986) (“1986 Policy Statement”), *recon. dismissed/denied*, 1 FCC Rcd 421 (1986)).

<sup>13</sup> 47 U.S.C. § 309(e); *see also* HDO, 29 FCC Rcd at 5429, ¶ 28.

<sup>14</sup> *See* EB Official Notice Exhibit No. 7 (1986 Policy Statement). *See also* EB Official Notice Exhibit Nos. 9-11 (Policy Regarding Character Qualifications in Broadcast Licensing, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (“1990 Policy Statement”), *modified*, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), *further modified*, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992)).

<sup>15</sup> EB Official Notice Exhibit No. 9 (1990 Policy Statement, 5 FCC Rcd at 3252).

<sup>16</sup> *Id.*

<sup>17</sup> EB Official Notice Exhibit No. 7 (1986 Policy Statement, 102 FCC 2d at 1205 n.60).

and warranted a revocation of his previously-held broadcast licenses.<sup>18</sup> The Commission will not revisit this determination,<sup>19</sup> and in fact considers it *res judicata* for the purposes of the instant proceeding.<sup>20</sup>

9. Instead, the Presiding Judge must weigh whether Rice has been sufficiently rehabilitated and, therefore, is qualified to hold a Commission license. Whether an applicant has been rehabilitated will necessarily turn on the facts of each case. In the *1990 Character Policy Statement*, the Commission stated that it will consider, among other factors,

(1) whether the applicant has not been involved in any significant wrongdoing since the alleged misconduct occurred; (2) how much time has elapsed since the misconduct; (3) the applicant's reputation for good character in the community; and (4) meaningful measures taken by the applicant to prevent the future occurrence of misconduct.<sup>21</sup>

10. Recognizing “the known risks of...radio[] [licenses] in the hands of sex offenders,”<sup>22</sup> in the case of an applicant such as Rice, who is an adjudicated child sex offender, the Commission has established a high bar to demonstrate rehabilitation. Consistent with Commission precedent, Lake must demonstrate that Rice has been rehabilitated sufficiently to outweigh his prior disqualifying felony convictions.<sup>23</sup>

11. In addition, in view of the fact that the Commission found, and the United States Court of Appeals for the D.C. Circuit affirmed, that, independent of his felony conviction, Rice's previously-held Commission licenses should be revoked as a result of his misrepresentation and lack of candor with the Commission, Lake has the burden of proving that Rice (and therefore, Lake) can now be truthful with the Commission.

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<sup>18</sup> See cases cited *supra* note 2.

<sup>19</sup> See *In re Schoenbohm*, 17 FCC Rcd 1369, 1369 ¶ 2 (2002).

<sup>20</sup> See cases cited *supra* note 2.

<sup>21</sup> EB Official Notice Exhibit No. 9 (*1990 Character Policy Statement*, 5 FCC Rcd 3252 n.4 (internal citation omitted)).

<sup>22</sup> EB Official Notice Exhibit No. 13 (*David Titus*, 29 FCC Rcd 14066, 14069, ¶ 11 (2014) (*Titus*)).

<sup>23</sup> See, e.g., *id.* at 14071, ¶ 13.

12. As set forth in greater detail below, Lake has not met either burden.

### III. LAKE'S DIRECT CASE FAILS TO SATISFY ITS BURDEN OF PROOF

13. In support of its direct case, Lake submits a number of proposed exhibits that fail to establish, by a preponderance of the evidence, either Lake's or Rice's ability to be truthful with the Commission or Rice's rehabilitation since his criminal conviction and the revocation of his prior broadcast licenses.

14. Lake has not offered any evidence demonstrating that, despite Rice's previous misrepresentation and lack of candor with the Commission, he (and therefore, Lake) can now be truthful in their dealings with the Commission. The only evidence which even appears to address this issue is a single sentence in the two declarations from Rice (one of which the Enforcement Bureau (Bureau) understands to be Rice's written direct testimony and the other the written direct testimony offered by the corporate entity, Lake)<sup>24</sup> which simply states that both Rice and Lake can be relied upon to be "truthful, candid, and forthcoming in their dealings with the Commission" and will comply the Commission's rules, regulations and policies.<sup>25</sup> This alone is insufficient to meet Lake's burden of proof.

15. With regard to Rice's rehabilitation, Lake submits a declaration from Rice in which he concedes that he was convicted of sexual offenses for which he was incarcerated, but does not identify the specific type of sexual offenses for which he was convicted or express contrition.<sup>26</sup> Lake further submits the written direct testimony of Dr. Ann Dell Duncan-Hively, a clinical psychologist whose specialty does not appear to be the evaluation of sex offenders.<sup>27</sup> Dr.

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<sup>24</sup> See Lake Direct Case Exhibit 1 and 2.

<sup>25</sup> *Id.*

<sup>26</sup> See Lake's Direct Case Exhibit 1. See also EB Official Notice Exhibit 13 (*Titus*, 29 FCC Rcd at 14074, ¶ 18 and n.69 (recognizing the administrative law judge's consideration of the convicted sex offender's testimony "that he knows he harmed his victims" and "regrets his past conduct"))).

<sup>27</sup> See Lake Direct Case Exhibit 3.



Duncan-Hively previously evaluated Rice, before his incarceration, and she has prepared two psychological examinations – one dated September 18, 1991 and the second dated August 22, 2014 – on his behalf.<sup>28</sup> Notably, neither examination clearly addresses Rice’s sexual offenses and/or his deviant sexual behavior; and therefore, neither report acknowledges even the possibility that Rice suffers from a sexual disorder from which he cannot be cured.

16. In addition, Lake offers six letters of reference from various “acquaintances and business associates of Mr. Rice.”<sup>29</sup> None of these letters was signed under penalty of perjury and none of the authors of these reference letters have been identified as potential witnesses at the hearing, subject to the cross-examination of Bureau counsel. Accordingly, these letters are nothing more than out-of-court statements offered by Lake for the very purpose of proving the truth of the matter therein asserted, *i.e.*, that “Mr. Rice is honest, is respected in the community, is a changed man, has achieved extraordinary rehabilitation and good standing in [the community], and fully complies with all FCC and FAA regulations in the current maintenance and operation of his communications towers.”<sup>30</sup> As such, these reference letters are hearsay.<sup>31</sup> In the absence of Lake presenting a basis for why these reference letters meet an exception to the “hearsay rule” they should be excluded as inadmissible.<sup>32</sup>

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<sup>28</sup> See Lake Direct Case Exhibit 3 and Attachments B and C, thereto.

<sup>29</sup> See Lake Direct Case Exhibit 1, Appendix C.

<sup>30</sup> Lake Direct Case Exhibit 1 at 3.

<sup>31</sup> See Fed. R. Evid. 801. See also 47 C.F.R. § 1.351 (“Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings.”).

<sup>32</sup> See Fed. R. Evid. 801 and 802. In its responses to the Bureau’s objections to Lake’s direct case exhibits, Lake contends that these letters “should be admitted into evidence without special foundation or declarations of non-perjury by their authors” and that Rice’s declaration at the beginning of Lake Direct Case Exhibit 1 “should suffice.” Lake Broadcasting, Inc.’s Responses to Enforcement Bureau’s Objections to Lake’s Direct Case Exhibits, filed Apr. 25, 2017, at 2. Lake relies on the Presiding Judge’s *Order*, FCC 14M-19 and on the transcript from a June 24, 2014 prehearing conference. However, there is nothing in this *Order* or in the prehearing conference transcript that suggests the Presiding Judge intended to allow such character letters to be admitted as evidence without Lake first meeting basic evidentiary standards.

17. As further evidenced below, Lake's direct case evidence fails to demonstrate that Rice has been rehabilitated sufficiently to outweigh his previous disqualification, and as such, has the character to be a Commission licensee.

#### **IV. THE BUREAU'S DIRECT CASE SHOWS CLEAR DEFICIENCIES IN LAKE'S CASE**

18. In *Titus*, the Commission acknowledged that it will consider many factors when determining whether a convicted sex offender has been rehabilitated sufficiently to warrant holding a Commission license, including medical evaluations, the testimony of character witnesses, and the convicted sex offender's expression of contrition, if any.<sup>33</sup> In addition, the Commission will defer to the local law enforcement's determination regarding the sex offender's ongoing risk to the community.<sup>34</sup> As the Commission further recognized, "[g]iven the greater expertise of local authorities in evaluating the risks that sex offenders pose to their communities,"<sup>35</sup> local law enforcement is "better positioned to make the determination whether an individual poses a danger to the community than is the Commission."<sup>36</sup>

19. At the hearing, the Bureau is prepared to show that, based on the medical examination conducted by the Bureau's expert witness, Dr. Kimberly Weitzl, a licensed psychologist in Missouri with an expertise in assessing the risk factors of convicted male sex offenders, and the opinions of those in local Missouri law enforcement, Rice has not been sufficiently rehabilitated to have the character to be a Commission licensee. In particular, the Bureau will establish that Rice's sex offender treatment was unsuccessful and that Rice has never accepted responsibility for his offenses – two critical factors in assessing rehabilitation.

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<sup>33</sup> See EB Official Notice Exhibit No. 13 (*Titus*, 29 FCC Rcd at 14074, ¶ 18).

<sup>34</sup> See *id.* at 14073, ¶ 15.

<sup>35</sup> See *id.* at 14073, ¶ 16.

<sup>36</sup> See *id.* at 14073, ¶ 15.

Moreover, the Bureau will present evidence that Rice has not taken sufficient steps to avoid re-offending. In the face of the Bureau's evidence, Lake has not met – and cannot meet – its burden of proof.

**A. Summary of Bureau's Written Direct Testimony**

20. In support of its direct case, the Bureau presents the written direct testimony of two individuals – Tammy Gremminger and Dr. Kimberly Weitzl – who are now, or have previously been, employed by the Missouri Department of Corrections, and who each have specialized knowledge concerning the measures that Missouri law enforcement has adopted in “evaluating the risks that sex offenders pose” to the community and assessing their risk to re-offend.<sup>37</sup>

21. Ms. Gremminger is a Sex Offender Specialist in the Probation and Parole Department of the Missouri Department of Corrections, where she has worked for more than 20 years supervising offenders who have been convicted of sexually violent crimes.<sup>38</sup> As part of her routine responsibilities, she has received extensive training concerning the criteria and tools provided by the state of Missouri to assess the risk posed by sex offenders.<sup>39</sup> Dr. Weitzl has similarly extensive experience with the risk factors that the state of Missouri considers in assessing a sex offender's risk to re-offend. For more than five years, Dr. Weitzl worked for the Missouri Department of Corrections/Missouri Sex Offender Program, conducting “end-of-confinement” evaluations of men and women sex offenders and assessing their risk to re-offend.<sup>40</sup> As detailed below, each of these Bureau witnesses conclude that Rice poses a high risk to re-offend.

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<sup>37</sup> *Id.* at 14072-73, ¶¶ 15-16.

<sup>38</sup> *See, e.g.*, EB Direct Case Exhibit No. 2 (Written Direct Testimony of Tammy Gremminger (Gremminger)) at ¶¶ 1-2.

<sup>39</sup> *See, e.g., id.* at ¶¶ 5-6.

<sup>40</sup> *See, e.g.*, EB Direct Case Exhibit No. 1 (Written Direct Testimony of Dr. Kimberly Weitzl (Weitzl)) at ¶ 6.

22. Dr. Weitzl will also offer her medical opinion concerning Rice's mental state and whether his rehabilitation has been successful based on the nearly two-hour clinical interview she conducted of Rice in December 2015 and on her review of Rice's file maintained by the Missouri Department of Corrections, Board of Probation and Parole (described below).

### **B. Summary of The Bureau's Documentary Evidence**

23. The Bureau has offered into evidence a number of Missouri state records – obtained from the Missouri Department of Corrections, Board of Probation and Parole – that demonstrate Rice's sexual offenses against children, the ineffectiveness of the sex offender treatment he received during his incarceration and on parole, and the risk that he will re-offend.<sup>41</sup> Specifically, the Bureau submitted as evidence the following documents:

- the summary of a polygraph examination of Rice conducted at the Probation and Parole offices in St. Charles, Missouri, in which Rice "admits he has an extensive history of inappropriate sexual interactions with teenage boys...dating back to his early thirties;"<sup>42</sup>
- the state of Missouri Department of Corrections MoSOP Participation & Examination Report, which reflects Rice's denial of responsibility for his conduct and concludes Rice has a high risk to reoffend sexually;<sup>43</sup>
- a Missouri Department of Corrections and Human Resources Board of Probation and Parole Hearing Report, prepared in August 1996, which describes the offense(s) for which Rice was convicted;<sup>44</sup>
- a document prepared by one of the investigators working on Rice's case,<sup>45</sup> describing how Rice used his ownership of radio stations as a lure for the

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<sup>41</sup> While the Bureau contends that each of these documents fall within the "public records and reports" exception to the hearsay rule (*see* Fed. R. Evid. 803(8)), the Bureau has provided a declaration from Tammy Gremminger, an employee of the Missouri Department of Corrections, who further authenticates these documents. *See* EB Direct Case Exhibit No. 5 (Declaration Regarding Business Records of the Missouri Department of Corrections). Ms. Gremminger is being offered for cross-examination.

<sup>42</sup> EB Direct Case Exhibit No. 4 (Missouri Department of Corrections Board of Probation and Parole file relating to Michael Rice) at internally numbered page 4.

<sup>43</sup> *See* EB Direct Case Exhibit No. 4 at internally numbered pages 7-10. The Bureau notes that MoSOP stands for Missouri Sex Offender Treatment Program. The Bureau further notes that the poor reproduction quality exists in the original.

<sup>44</sup> *See* EB Direct Case Exhibit No. 4 at internally numbered pages 11-17.

<sup>45</sup> *See* EB Direct Case Exhibit No. 4 at internally numbered pages 18-21.

neighborhood children, several of whom he enticed with a future in radio as disc jockeys;<sup>46</sup>

- a document entitled, “Circumstances of the Crime and of Prisoner's Commitment,” showing the state attorney’s opposition to Rice’s early release because he did not plead guilty and because he “has never admitted guilt or shown remorse – the two most important ingredients for successful probation or clemency;”<sup>47</sup>
- a document prepared by Patricia Kehoe, a Missouri State Probation and Parole Officer in August 1994, for the purposes of determining whether Rice was eligible for probation in which Ms. Kehoe recommended denying probation<sup>48</sup>; and
- a victim impact statement prepared by a state of Missouri Probation and Parole officer in August 1994, concerning Rice’s victims, one of whom was 11 years old at the time of the offense, and whom Rice molested inside one of his radio relay stations.<sup>49</sup>

### **C. Summary of The Bureau’s Case**

#### **1. Rice’s Sex Offender Treatment Was Not Successful**

24. At the hearing, the Bureau will show that, although Rice participated in sex offender treatment, both during and after his incarceration, it was not successful. For example, Lake offers evidence that Rice completed Phases I and II of the Missouri Sexual Offender Program (MoSOP) when he was incarcerated.<sup>50</sup> However, Missouri state records prepared contemporaneously with Rice’s participation in MoSOP reflect that he did not appear to have internalized the treatment concepts, doing just enough to meet the program’s requirements.<sup>51</sup> Indeed, the report prepared by the Missouri Department of Corrections at the conclusion of Rice’s participation in the Program, and executed by the MoSOP Clinical Supervisor (who was also a licensed clinical social worker) and the Director of MoSOP (who was also a licensed psychologist), indicates that,

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<sup>46</sup> See EB Direct Case Exhibit No. 4 at internally numbered page 21.

<sup>47</sup> EB Direct Case Exhibit No. 4 at internally numbered page 23.

<sup>48</sup> See EB Direct Case Exhibit No. 4 at internally numbered pages 25-28. The Bureau notes that the first page of this document is missing from the original received from the Missouri Department of Corrections.

<sup>49</sup> See EB Direct Case Exhibit No. 4 at internally numbered pages 29-34.

<sup>50</sup> See Lake Direct Case Exhibit No. 1 at Appendix A.

<sup>51</sup> See, e.g., EB Direct Case Exhibit No. 4 at internally numbered page 8.

regardless of Rice's completion of the Program, he is at a "high risk to reoffend sexually."<sup>52</sup>

They further caution that because of Rice's risk to reoffend, he should be subject to "close supervision by his parole officer and continued therapy."<sup>53</sup>

25. In addition, Dr. Weitzl's testimony reflects her concerns that Rice's sex offender treatment was unsuccessful. For example, Dr. Weitzl opines that during her clinical interview of Rice, he was unable to explain the basic components of his treatment, such as the type of sexual offenses for which he was incarcerated or his relapse prevention plan.<sup>54</sup> She is also concerned that Rice failed to gain any insight during his apparent sex offender treatment into how the depression he claims to suffer from – and on which he blames his sexual offenses – was associated with his sexually deviant behavior.<sup>55</sup> Furthermore, Dr. Weitzl raises concerns that the sex offender treatment program in which Rice was enrolled while on parole was provided by an unlicensed provider who was removed from the state of Missouri's approved sex offender treatment provider list.<sup>56</sup> As Dr. Weitzl testifies, "[t]his raises serious doubts about the quality of treatment Mr. Rice was provided."<sup>57</sup>

26. Ms. Gremminger raises similar concerns in her testimony. In particular, Ms. Gremminger notes that Rice was required to undergo sex offender treatment that consisted of "a community-based treatment program conducted by a provider approved by the Department of Corrections whose therapy is based on standards outlined by the Association for the Treatment of Sexual Abusers."<sup>58</sup> Because Rice did not receive sex offender treatment during parole from a

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<sup>52</sup> See EB Direct Case Exhibit No. 4 at internally numbered page 10.

<sup>53</sup> *Id.*

<sup>54</sup> See, e.g., Weitzl at ¶ 60; see also Weitzl at ¶¶ 28-30.

<sup>55</sup> See *id.* at ¶ 60.

<sup>56</sup> See *id.* at ¶ 63.

<sup>57</sup> *Id.*

<sup>58</sup> Gremminger at ¶ 10.

state-approved therapist, Ms. Gremminger questions whether he received adequate therapy.<sup>59</sup>

She further testifies that “[h]is failure to obtain proper therapy is a factor undermining any claim that he is currently rehabilitated.”<sup>60</sup>

## **2. Rice Has Never Accepted Responsibility for His Actions**

27. A key factor utilized by local law enforcement in Missouri, and by those specialized in assessing a sex offender’s risk to re-offend, is whether the offender has admitted responsibility for his actions and/or shown remorse.<sup>61</sup> Rice has never taken responsibility for the offenses for which he was convicted. Indeed, Rice’s declaration submitted in support of Lake’s direct case fails to state anything other than that he was convicted for non-violent sexual offenses.<sup>62</sup> At no point therein does Rice ever admit responsibility or express remorse for his actions.<sup>63</sup>

28. Instead, the evidence reflects that Rice has repeatedly denied and/or tried to excuse his sexually offending behavior. For example, Dr. Weitzl testifies that during her clinical interview of Rice, he repeatedly explained away his actions as the result of his use of “alcohol, his apparent mental illness, and [his] stress from overworking. In addition, he excused his behavior by indicating that ‘the victims enjoyed the abuse,’ ‘the abuse wasn’t planned,’ and ‘the victims were ‘street kids.’”<sup>64</sup> It appears that Rice has taken a page from Dr. Duncan-Hively’s 1991 evaluation in which she concludes that it was Rice who was the victim – manipulated by “skillful” young

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<sup>59</sup> *Id.* at ¶ 11.

<sup>60</sup> *Id.*

<sup>61</sup> *See, e.g.*, EB Direct Case Exhibit No. 4 at internally numbered page 23 (recognizing admission of guilt and showing of remorse as “the two most important ingredients for successful probation or clemency”); *see also* Gremminger at ¶ 6.

<sup>62</sup> *See* Lake Exhibit 1.

<sup>63</sup> *See id.*

<sup>64</sup> Weitzl at ¶ 64; *see also id.* at ¶¶ 23, 54. Dr. Weitzl notes that Rice’s refusal to disclose and take responsibility for his behavior is additional evidence that his sex offender treatment was not successful. As she testifies, “full disclosure of – and admission to – one’s past behavior is a basic component of sex offender treatment.” *Id.* at ¶ 64. She adds that Rice’s continual denial of and or his minimization of his sexually offending behavior is “more reflective of someone who had never participated in sex offender treatment.” *Id.*

boys who came to his home to engage in sexual conduct.<sup>65</sup> Moreover, as Dr. Weitzl testifies, Rice still does not appear to understand that his sexual abuse of children was wrong or criminal.<sup>66</sup>

29. Indeed, Dr. Weitzl notes that during her interview with Rice, he “denied pleading guilty to the charges filed against him, explaining how he had instead ‘stipulated’ to the charges against him during a ‘bench trial.’”<sup>67</sup> He suggested to Dr. Weitzl that “stipulating to an offense was similar to an ‘Alford Plea (sic),’ where the individual does not have to admit guilt.”<sup>68</sup> In Dr. Weitzl’s estimation, this represents further evidence of Rice’s failure, and unwillingness, to accept responsibility for the actions that resulted in his conviction, and in the revocation of his previous Commission licenses.<sup>69</sup>

30. As Dr. Weitzl points out in her testimony, Rice continues to blame his sexually deviant behavior on things beyond his control, such as mental illness, alcohol, and overworking. She concludes that offenders, such as Rice, “who do not acknowledge their continued risk, no matter how small, are at a greater risk to reoffend because they will not take the appropriate precautions to assure they will not reoffend.”<sup>70</sup>

### **3. Rice Has Not Taken Steps To Avoid Reoffending**

31. As discussed above, because Rice refuses to take responsibility for his criminal actions, and recognize the harm he caused his victims, Lake’s evidence fails to demonstrate how Rice has taken the necessary steps to avoid placing himself in a position where he is likely to reoffend. Notably, while Rice continues to blame his sexually deviant behavior on things like his use of alcohol, an apparent mental illness (which he does not identify), and stress from

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<sup>65</sup> See Lake Direct Case Exhibit 3 at Appendix B at internally numbered page 214.

<sup>66</sup> See Weitzl at ¶ 55.

<sup>67</sup> *Id.* at ¶ 27.

<sup>68</sup> *Id.*

<sup>69</sup> See *id.*

<sup>70</sup> *Id.* at ¶ 54.



overworking, Rice's declaration omits any explanation of how he avoids these triggers. In fact, he admitted to Dr. Duncan-Hively that he continues to engage in social drinking.<sup>71</sup>

32. In contrast, the Bureau's evidence reflects that Rice suffers from at least four mental disorders, each of which increases the likelihood that Rice will continue to experience sexually deviant urges and reoffend.<sup>72</sup> In particular, Dr. Weitzl has concluded that Rice meets the criteria for pedophilia, a chronic and life-long sexual disorder from which Rice cannot be "cured."<sup>73</sup> As Dr. Weitzl testifies, "[a]n individual suffering from this disorder has had sexual fantasies, urges or behaviors involving children (typically aged 13 or younger) for at least six months. The individual has experienced personal distress regarding these urges or fantasies; or they have acted on the urges, causing personal distress to another."<sup>74</sup> Dr. Weitzl also concluded that Rice suffers from other specified paraphilic disorder Non Consent (also referred to as Hebephilia), a disorder that exists when an individual has demonstrated a pattern of sexual fantasies, urges or behaviors involving non-consenting persons, and these urges have resulted in personal distress and/or they have acted on these urges, resulting in personal distress in another; narcissistic personality disorder; and alcohol abuse disorder.<sup>75</sup> Lake offers no evidence to demonstrate how Rice keeps any of these mental disorders in check.

## V. CONCLUSION

33. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge find that Lake has failed to prove, by a preponderance of the evidence, either that (i) Lake/Rice will now be truthful in their dealings with the Commission; or (ii) Rice has been sufficiently

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<sup>71</sup> See Lake Direct Case Exhibit 3 at Appendix C at 4. This contradicts what Rice told the Bureau's expert, Dr. Weitzl. See Weitzl at ¶ 32.

<sup>72</sup> See Weitzl at ¶¶ 35-44.

<sup>73</sup> See *id.* at ¶ 36.

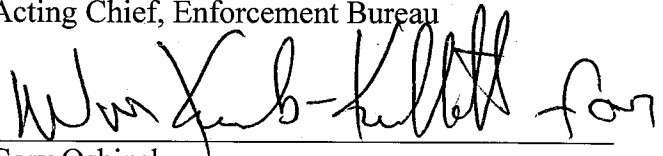
<sup>74</sup> *Id.*

<sup>75</sup> See *id.* at ¶¶ 38-44.

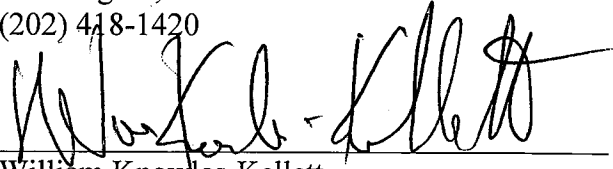
rehabilitated from the disqualifying acts for which he was convicted and for which his prior Commission licenses were revoked such that he now has the qualifications to be a Commission licensee. Accordingly, the Bureau respectfully requests that the Presiding Judge deny Lake's Application.

Respectfully submitted,

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April 26, 2017

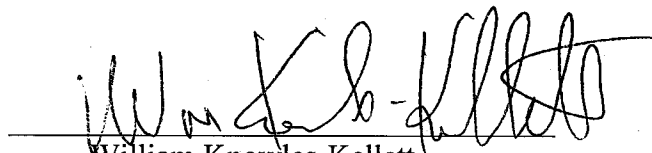
**CERTIFICATE OF SERVICE**

William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certifies that he has on this 26th day of April, 2017, sent by first class United States mail and by email copies of the foregoing ENFORCEMENT BUREAU'S TRIAL BRIEF to:

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And caused a copy of the foregoing to be served via hand-delivery to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
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